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Attorneys for Baptist Foundation of Arizona, Inc.
and certain subsidiaries

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:) In Proceedings Under Chapter 11
)
BAPTIST FOUNDATION OF ARIZONA, an) Case Nos. 99-13275-ECF-GBN through 99-
Arizona nonprofit 501(c)(3) corporation, and) 13364-ECF-GBN
related proceedings,)
) All Cases Jointly Administered Under Case
) No. 99-13275-ECF-GBN
Debtors.)
) DEBTORS' OBJECTION TO CLAIMS OF
) ARIZONA DEPARTMENT OF REVENUE
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Pursuant to Rule 3007 of the Bankruptcy Rules of Procedure and Section 502(a) of the Bankruptcy Code, Debtor and Debtor-in-Possession, Baptist Foundation of Arizona, Inc. (and certain of its subsidiaries, who also may be co-debtors, as applicable; collectively “**BFA**”), submits the following objection to the proofs of claim filed by the Arizona Department of Revenue (“**Department of Revenue**”). In support of this objection, BFA offers the following memorandum of points and authorities.

MEMORANDUM IN SUPPORT OF OBJECTION

I. FACTS

On November 18, 1999, the Department of Revenue submitted a proof of claim in Case No. 99-13278-ECF-RGM (In re The Foundation Companies, Inc.) alleging corporate income tax due in the amount of \$30,000.00 (\$10,000.00 for each of the years 1996, 1997, and 1998). On the same date, the Department of Revenue submitted a similar proof of claim in Case No. 99-13275-ECF-GBN (In re Baptist Foundation of Arizona) also asserting unpaid corporate income tax of \$30,000.00, comprised of \$10,000.00 for each of the years 1996, 1997, and 1998. On both proofs of claim, the claimed amounts are set forth as “Estimated Tax Due to Non-Filing.”

On March 2, 2000, the Department of Revenue submitted two proofs of claim in Case No. 99-13289-ECF-SSC (In re Foundation Investments, Inc.), one alleging unpaid sales tax for the month of October 1999 in the amount of \$301.67, and another alleging unpaid sales tax for the months of November and December 1999 in the total amount of \$603.34 (\$301.67 for each month). Again, the proofs of claim were based on an “Estimated Tax Due to Non-Filing.”

On April 19, 2000, the Department of Revenue submitted two proofs of claim in Case No. 99-13347-ECF-GBN (In re Saddle Mountain Park, Inc.), one alleging corporate income tax due in the amount of \$30,000.00 (\$10,000.00 for each of the years 1996, 1997, and 1998), and another alleging a total amount due of \$9,562.52, comprised of: (i) claims for alleged unpaid sales tax, penalties, and interest for the months of October 1999 (totaling \$267.21), November 1999 (totaling \$75.47), February 2000 (totaling \$609.92), and March 2000 (totaling \$609.92); and (ii) claims for alleged unpaid withholding taxes of \$4,000 for the 4th Quarter 1999, and another \$4,000 for the 1st Quarter 2000. On June 6, 2000, Claimant filed an Amended Proof of Claim in Case No. 99-13347-ECF-GBN (In re Saddle Mountain Park, Inc.) relating to the

allegedly unpaid sales and withholding taxes. In the Amended Proof of Claim, the total amount sought was reduced to \$322.27.

II. LAW AND BASIS FOR OBJECTION

Objections to claims are governed by 11 U.S.C. § 502(a), which provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, . . . objects.” Section 502(b) provides that “[i]f such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount.”

Federal Rule of Bankruptcy Procedure 3001(f) provides that a proof of claim filed in accordance with the rules “shall constitute prima facie evidence of the validity and amount of the claim.” The burden of proof is on the objecting party to produce evidence equivalent in probative value to that of the creditor to rebut the prima facie effect of the proof of claim. However, “the ultimate burden of persuasion is always on the claimant.” In Re Holm, 931 F.2d 620, 623 (9th Cir. 1991) (citing 3 L. King, *Collier on Bankruptcy* § 502.02, at 502-22 (15th ed. 1991) (footnotes omitted)).

A properly supported objection to a claim initiates a contested matter under the Bankruptcy Rules of Procedure. See Fed. R. Bankr. P. 3007 (adv. comm. note).

BFA objects to each of the above claims for the following reasons:

(i) ***Case Nos. 99-13278-ECF-RGM (In re The Foundation Companies, Inc.) and 99-13275-ECF-GBN (In re Baptist Foundation of Arizona):*** BFA objects to the Department of Revenue’s allegations of unpaid corporate income taxes and failure to file in Case No. 99-13278-ECF-RGM (In re The Foundation Companies, Inc.) on the ground that the subject taxes have been accounted for and paid as part of the consolidated income tax form filed by

Foundation Administrative Services (“FAS”), which was filed for each of the years 1996, 1997, and 1998. BFA objects to the Department of Revenue’s allegations of unpaid corporate income taxes and failure to file in Case No. 99-13275-ECF-GBN (In re Baptist Foundation of Arizona) on the ground that BFA is a non-profit corporation that is exempt from filing. Moreover, as of the present date, BFA’s records do not reflect any amounts being owed to the Department of Revenue.

(ii) *Case No. 99-13289-ECF-SSC (In re Foundation Investments, Inc.)*: BFA objects to the Department of Revenue’s allegations of unpaid sales taxes and failure to file on the ground that BFA’s records show no sales taxes were due for the months of October, November, and December 1999. FII received no rental money during the 4th Quarter of 1999; thus, there were no sales to tax.

(iii) *Case No. 99-13347-ECF-GBN (In re Saddle Mountain Park, Inc.)*: BFA objects to the Department of Revenue’s allegations of unpaid corporate income taxes for the years 1996, 1997, and 1998. Saddle Mountain RV Park’s corporate income taxes are accounted for and paid as part of the consolidated return filed by A.L.O., Inc. (“ALO”). (See May 3, 2000 Correspondence from BFA to Arizona Department of Revenue) (attached).¹ BFA objects to the amounts claimed for unpaid sales taxes based on an “estimate due to non-filing” for 10/99, 11/99, 2/00, and 3/00. Each of the returns have been filed as part of ALO’s consolidated returns, and the sales taxes have been paid, except for 10/99, on which the actual amount of \$204.73 is owed. (See 10/99 TPT-1) (attached). BFA objects to the claims related to allegedly unpaid withholding

¹ BFA’s May 3, 2000 correspondence erroneously identifies Select Trading Group, and not ALO, as the entity through which Saddle Mountain RV Park’s corporate income taxes are paid via a consolidated return.

taxes. BFA's records demonstrate that both the 4th Quarter 1999 and 1st Quarter 2000 returns have been filed and the amounts paid.

III. CONCLUSION

For the above reasons, BFA respectfully requests that the Court (i) schedule an evidentiary hearing on the claims brought by the Department of Revenue; (ii) require claimant to demonstrate its claims by a preponderance of the evidence; and (iii) disallow each claim to the extent merited by the applicable facts and law.

RESPECTFULLY SUBMITTED this 7th day of November, 2000.

SQUIRE, SANDERS & DEMPSEY L.L.P.

Two Renaissance Square
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004-4441

By: /s/ Craig D. Hansen
Craig D. Hansen

Attorneys for Baptist Foundation of Arizona, Inc.,
and certain of its subsidiaries and affiliates



May 3, 2000

Arizona Department of Revenue
Technical Compliance Service Section, Bankruptcy unit
1600 W. Monroe, Room 110
Phoenix, AZ 85007

Re: Saddle Mountain RV Park, Inc.
Bankruptcy #9913347 ECF GBN Chapter 11

To Whom It May Concern:

We are in receipt of your letter dated April 21, 2000 regarding the status of past tax returns and payments.

The following is our response:

NAME	ACCOUNT #	TYPE	TAX PERIOD	COMMENTS
Saddle Mountain RV Park	86-0844017	Corporate	1996-1998	Filed as a consolidating company under Select Trading Group (#86-0715866)
	07-543240-Z	TPT	10/99, 11/99, 2/00, 3/00	All tax returns have been filed. The 10/99 tax return has not been paid as it is pre-petition.
	07-07576132B	Withholding	4 th Qtr 1999, 1 st Qtr 2000	Both returns have been filed and paid.

If you have not received the returns listed, please let us know and we will be more than willing to provide copies of returns already filed.

Sincerely,

Erik Anspach
Accounting Manager

cc: Brian W. Hendrickson
Mark R. Roberts

BAPTIST FOUNDATION
OF ARIZONA

1313 EAST OSBORN ROAD,
SUITE 250
P.O. BOX 33339
PHOENIX, ARIZONA 85067
602/279/3587 602/766/4875
FAX 602/266/7288

OCT 30 '00 12:15

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TRANSACTION PRIVILEGE, USE AND SEVERANCE TAX RETURN (TPT-1)

ARIZONA DEPARTMENT OF REVENUE
PO BOX 29010, PHOENIX, AZ 85068-0110

MAILING ADDRESS CORRECTION REQUESTED

THIS RETURN MUST BE FILED EVEN IF YOU HAD NO SALES ACTIVITY

BUSINESS NAME: SADDLE MOUNTAIN R.V. PARK, INC

C/O: _____

ADDRESS: P O BOX 33339CITY/STATE/ZIP CODE: PHOENIX, AZ 85067☒ Check if mailing address has changed

100	STATE LICENSE NO. <u>07-573240-2</u>	TAXPAYER IDENTIFICATION NO. <u>860844017</u>
PERIOD COVERED FROM <u>10/99</u> THROUGH <u>10/99</u>		PAGE <u>1</u> OF <u>1</u>
TRAN CODE: <u>00</u>	THESE AREAS FOR DEPARTMENT USE ONLY	
PAY TYPE: <u>00</u>	ORIGINAL SD#	
BD#		
PRE-PETITION		

POSTMARK	RECEIPT
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Business Description	L H C	Region Code	Stat. Class	R C	COLUMN 3		COLUMN 4		COLUMN 5		COLUMN 6		COLUMN 7	
					Gross	- Deductions	- Net Taxable	x Tax Rate	- Tax Amount	Accounting Credit Rate	- Accounting Credit			
HOTEL/MOTEL	1	PAR	25				3294	10	0.0627	206	54	.00055	1	81
	2													
	3													
	4													
	5													
	6													
	7													
	8													
	9													
	10													
	11													
	12													
SUBTOTAL	13	***	***											
STATE EXCESS	14	TTT	09		ENTER EXCESS STATE TAX COLLECTED				PLUS (-)					
OTHER EXCESS	15	TTT	10		ENTER OTHER EXCESS TAX COLLECTED				PLUS (-)					
GRAND TOTAL	16	TTT	20						EQUALS(=)	206	54			
	17				ACCOUNTING CREDIT from line 16 column 7				25 MINUS (-)	1	81			
	18				PENALTY & INTEREST (see instructions)				30 PLUS (-)					
	19				ENTER TOTAL LIABILITY				35 EQUALS(=)					
	20				ENTER CREDIT BALANCE TO BE APPLIED				40 MINUS (-)					
	21				ENTER ESTIMATED PAYMENTS TO BE USED				45 MINUS (-)					
	22				ENTER NET AMOUNT DUE				99 EQUALS(=)	204	73			

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Preparer's Signature (other than preparer)

Paid Preparer's EIN or SSN

Taxpayer's Signature

Date

ADOR 64-1048

(TPT-1) (2/98)

Please make check payable to ARIZONA DEPARTMENT OF REVENUE, EQUITY DIVISION

SIF A200P00.1

OCT 30 '00 12:15

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